

Board Of Adjustment
Milton Library, 121 Union Street
Tuesday, October 28, 2014
7:10 p.m.

1. Call to order

2. Roll call of members

Janet Turner	Present
Valerie Valeska	Present
Jim Crellin	Present
Bob Carbone	Absent

3. Additions/Corrections to agenda

Jim Crellin: Any additions or corrections to the agenda?

4. Approval of agenda

Janet Turner: No

Jim Crellin: All in favor of passing the agenda say aye. Opposed. Motion carried.

5. Public Hearing:

- a. The applicant, Mike Cotten, is requesting the following variance to Section 220-26 of the zoning ordinance to allow a screened porch to extend 3 feet into the side yard setback located at 209 West Shore Drive, lot 152, further identified by Sussex County Tax Map and Parcel # 2-35-20.00-481.00.

Jim Crellin: Who is representing the applicant today? And you are? Is anybody representing the opposition to this variance, or in support of the variance?

John Hertnet, 129 Wagamon's Boulevard, Lot 151

Jim Crellin: Very good, thank you. Would the applicant speak and identify him or herself and also describe what it is we're... take us through the proposed adjustment.

Michael Cotten, Cotten Engineering: We did the site plan and the stake-out for the house on Lot 152. When it was originally designed, it was going to be a patio/deck. The home builder built a covered porch, according to their normal standard plans, so it was a communication error and according to your Code, if it is a patio/deck, you can encroach up to half the distance of the side BRL. The house is built right now and it doesn't look bad, it blends in nice with the existing houses around it.

Jim Crellin: Does the Board of Adjustment have any questions of the applicant?

Valerie Valeska: Not at the present time, no.

Janet Turner: I just want to say that I went out there today and looked at it and it's already done, it's a done deal.

Michael Cotten: It's already done.

Janet Turner: I just wanted to tell the committee that it is already existing and it looks perfect.

Seth Thompson: I had one quick question, Mr. Cotten. It looks like on the survey it's 7.9 feet from the line. I noticed the request asked for 3'. Is that just in case there's a slight margin of error on the calculations?

Michael Cotten: Not really a slight margin of error in calculation, but it's a nice round number.

Seth Thompson: I see. But there aren't any plans to build something... I recognize it would be a matter of inches.

Michael Cotten: No.

Seth Thompson: Thank you.

Jim Crellin: The person supporting, do you have any comments to make?

John Hertnet, 129 Wagamon's Boulevard, Lot 151: No. I think it blends in. I don't have a problem with it. It's right in my backyard.

Jim Crellin: Okay.

Janet Turner: If it intrudes on anybody, it's on Lot 150, behind him. You're on 152?

John Hertnet: Lot 151.

Janet Turner: You're not actually in that area where it abuts?

Michael Cotten: Currently there's no fence there, but per Code you could put a 6' high fence on the property line, which would be more intrusive than the patio, or the sun porch.

Jim Crellin: Any other comments from the Board?

Valerie Valeska: No comments.

Jim Crellin: Okay, you say this was originally intended to be a patio?

Michael Cotten: Yes, but it was my mistake, I'll admit it, that I didn't follow through with the Project Manager, to ensure that it was going to be swapped with the patio deck.

Jim Crellin: Okay.

Michael Cotten: Because on the back of the house was a patio/deck and a screened porch and we were going to swap, but the Project Manager left the company two weeks after that and then it just...

Jim Crellin: What's the verdict from the Board?

Seth Thompson: Maybe if the Board would find it helpful, I can walk through just the standard for granting variances...

Jim Crellin: Go ahead.

Seth Thompson: Maybe if Mr. Cotten wants to chime in on any of these, but there are a couple of different determinations, or a couple of different factors the Board has to look, it has to weigh the benefit to the applicant against any detriment to the health, safety and welfare of the neighborhood or community. So you're kind of doing a juggling act here. The applicant obviously, the house is already built. I don't think we received any testimony in terms of it being a detriment to the community. You need to determine whether there's an undesirable change that will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance; whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than the variance; again, that's fairly difficult given the fact that it's already constructed at this point; whether the requested area variance is substantial; whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood; whether the alleged difficulty was self-created... Mr. Cotten, I take it you're not the owner of the property currently?

Michael Cotten: No. I'm not.

Seth Thompson: Which consideration shall be relevant to the decision of the Board of Adjustment but not necessarily preclude the granting of the variance; and, whether the proposed change could be made on any other portion of the lot without recourse to a variance. And again, part of those really aren't going to be applicable with the structure that's already in existence. But that's really the standard the Board would look to. It's basically a

balancing test. Just for the record, we'll note that Kristy you sent out the certified mailings to Mr. Cotten. Alright, thank you and the newspaper publication. Thank you.

Don Mazzeo: Mr. Chairman, may I make a comment?

Jim Crellin: Yes, go ahead.

Don Mazzeo, 113 Aisle Lane: Just for the record, there is an Homeowner's Association in existence and according to the restrictive covenants that are in place, any alterations from the existing site plan must go through the Homeowner's Association. I just want to make sure that the Town is not forcing something to be put in place or a remedy cannot be made, because it's an existing condition, but I believe the Homeowner's Association and it's the developer who is the Homeowner's Association, has to be notified of this and even before a Certificate of Occupancy should be applicable, even when, or if you approve this variance, I believe the Homeowner's Association must also approve it.

Michael Cotten: I spoke to the developer and he said it was more a town matter than it was his, so he wasn't going to get involved.

Jim Crellin: Okay legal eagle.

Seth Thompson: This is a fairly common scenario. The Town can't enforce Homeowner's Association restrictive covenants, that's obviously for the Homeowner's Association to deal with. The Town enforces it's ordinances... Now of course, occasionally the Town has to look to see if it's against an Homeowner's Association regulation, as some indication as to whether or not that's appropriate in the community, but they're certainly... especially these days Declaration of Restrictive Covenants are fairly encompassing and often have their own variation or variance process. The other element here is it sounds like, it's still in the control of the developer, it sounds like, as is pretty common the developer takes a fairly lax approach to enforcement and then it gets turned over to the Homeowner's Association after it builds out to whatever the super-majority is, but normally, again the Board of Adjustment can't necessarily... well the Board of Adjustment and the Town can enforce an Homeowner's Association document. I think they can look to see if it's out of the character of the neighborhood, or if there's strong opposition, because again, that's really an indicator that it's out of the character of the neighborhood. Here we don't have that opposition.

Jim Crellin: So are you saying that the Homeowner's Association could still, if we approved it, they could still not allow it?

Seth Thompson: That's certainly possible.

Jim Crellin: It's pretty hard once it's built.

Seth Thompson: Right. By granting the variance, the Town isn't precluding the Homeowner's Association from enforcing it's...

Jim Crellin: From doing it's thing. Yeah, okay.

Seth Thompson: That's right.

Don Mazzeo: Again, Mr. Chairman, this is strictly for the record that it's here and it's public.

Jim Crellin: Okay. Fine. Thank you. Are we ready to vote, ladies?

Valerie Valeska: Ready to vote.

Jim Crellin: Janet?

Janet Turner: Yes, I just want to be specific that in regard to the questions that our attorney mentioned that, in consideration I would say that it conforms to all the questions you asked and therefore, I would recommend to approve.

Seth Thompson: And before we take the official vote, I think we do probably need to close the public hearing and move into the Business portion. That's the way the agenda is written.

Jim Crellin: Okay.

Seth Thompson: So if you want to take a motion to close the public hearing and go into the

business portion.

Jim Crellin: Okay, we'll close the public portion of the meeting. Is everyone in favor of that?

Janet Turner: Yes.

Valerie Valeska: Yes.

Jim Crellin: Okay. Sobeit.

6. Business – Discussion and possible vote on the following items:

- a. The applicant, Mike Cotten, is requesting the following variance to Section 220-26 of the zoning ordinance to allow a screened porch to extend 3 feet into the side yard setback located at 209 West Shore Drive, lot 152, further identified by Sussex County Tax Map and Parcel # 2-35-20.00-481.00

Jim Crellin: Now we will consider the applicant's proposal and cast our votes. Do you want to start and be relatively specific about the reason you are voting the way you are.

Janet Turner As I said before, given the questions that were proposed that we should give consideration as to whether this is in compliance or falls within the parameters of being allowed, I would say yes to all of them. They do not create a problem and one of the questions I was looking at, was what would be the long term consequences, because actions taken by the Board of Adjustment live in perpetuity with the property and I don't see any problems there, going forward, so I recommend that this be approved.

Valerie Valeska I've studied the plans. I've looked at it realizing that again, we're dealing with events after the fact. The structure is already in place. The 3' incursion into the offset there; it really isn't great. It's nominal. You're allowed up to 50% of that space and there's an equal portion on the bordering properties and all things considered, I vote to approve it.

Jim Crellin I also vote to approve it and I think my major reason is it doesn't detract from the overall character of the neighborhood.

Jim Crellin: So the variance has been approved.

7. Adjournment

Jim Crellin: Need a motion to adjourn.

Valerie Valeska: I motion to adjourn the meeting.

Jim Crellin: Second?

Janet Turner: I second.

Jim Crellin: All in favor say aye. Opposed. Meeting is adjourned at 7:26 p.m.